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S E C R E T SECTION 01 OF 03 THE HAGUE 002766

SIPDIS

STATE FOR AC/CB, P/CBM. VC/CCB, L/ACV, IO/S
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JOINT STAFF FOR DD PMA-A FOR WTC
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NSC FOR CHUPA
WINPAC LIEPMAN

E.O. 12958: DECL: 11/04/2013

TAGS: [PARM](#) [PREL](#) [CWC](#)

SUBJECT: CHEMICAL WEAPONS CONVENTION (CWC): WRAP-UP FOR
WEEK ENDING 31 OCT 2003

Classified By: Ambassador to the OPCW Eric M. Javits. Reasons: 1.5 (B, D)

This is CWC-116-03.

[11.](#) (SBU) Summary: On Oct. 30, U.S. delegation members met with OPCW officials to discuss the status of upcoming ILO Administrative Tribunal actions stemming from the OPCW tenure policy. Additional points on side-bar discussions at the Eighth Conference of States Parties are also provided for the record, covering FRG Schedule 2A transfers, DOC/PSF site selection, Finnish destruction assistance to Russia, the Working Capital Fund, and Swiss comments on electronic declarations.

Meeting with OPCW Legal Experts

[12.](#) (SBU) U.S. Delegation members met October 30 with OPCW Deputy Director-General Brian Hawtin, Human Resources Branch Head Eva Murray, acting Legal Adviser Isaac Minta and Legal Counsel Jonathan Kusi to discuss upcoming ILO Administrative Tribunal actions concerning the OPCW. We asked whether lawsuits disputing the OPCW tenure policy were on the ILO AT docket for its winter term, and if so, whether the OPCW had obtained copies of the complaints. We stressed that as the largest contributor to the OPCW budget, the U.S. has a strong interest in these cases, and proposed that the OPCW and U.S. identify points of contact to coordinate strategy and follow developments at the ILO AT.

[13.](#) (SBU) Minta said that no suits against implementation of the tenure policy had yet been filed with the ILO. He anticipated that this would be done at the Tribunal's next session, scheduled for November 3-21. He recalled that the tenure decision had been made in April 2003. The OPCW's internal Appeals Council had recommended suspending implementation of the new tenure policy, but the Conference of States Parties had given clear instructions to Director General Pfirter to proceed. Therefore, Minta said, the DG would formally decline the Appeals Council's recommendation in the coming days, press ahead with implementation, and the first staff members would leave their positions on November [15](#). Minta said that these inspectors could not file claims until they had left their positions.

[14.](#) (SBU) Once the ILO AT takes up the tenure cases, Minta said the process will take the better part of a year, as the OPCW has the opportunity to reply to the complaints, the complainants then submit a rejoinder, and finally the OPCW may make a surrejoinder - with extendable 30-day time periods between each step in the process. Therefore, he said, the Tribunal will continue to consider these cases at its April-May 2004 session. He judged that the earliest feasible decision would be in July. He dismissed as "wishful thinking" OPCW Staff Council expectations that this could be done by February 2004

[15.](#) (SBU) Besides the tenure issues, Kusi and Minta noted that two older cases involving the OPCW were presently on the agenda of the ILOAT winter session. One was the complaint of Ruth Mohlenkamp, a former D-1 who had been moved into a P-5 position. The other involved 27 staff members classified as P-3's appealing for their positions to be re-designated as P-4s and grieving the designation process. Minta voiced confidence that the worst case scenario in the latter case would be an ILOAT mandate to once again run the process of designating positions P-3, as opposed to P-4, but that there would be no financial judgment against the OPCW.

[16.](#) (SBU) We reiterated our desire to keep in close touch with the Organization's legal team, noting that it was just a question of time before the ILOAT took up tenure suits against the OPCW. Hawtin and the others welcomed this proposal and expressed appreciation for U.S. interest. Minta suggested the U.S. may want to consider filing its own amicus

curiae brief.

SCHEDULE 2A TRANSFERS - FRG

17. (S) On the margins of CSP-8, Manfred Ruck of the German delegation informed the U.S. Del that the FRG had managed to resolve the two discrepancies in which it was involved -- cases where Morocco and Tunisia, respectively, had declared significant imports of Schedule 2A chemicals from Germany but where Germany had declared no corresponding export. In both cases, the source of the discrepancy was reporting error by the importing state party; i.e., that the transactions did not take place. This probably means that a transfer of some, presumably more anodyne chemical, did take place, and the wrong CAS number was reported. FRG Ambassador Olbrich held this up as an example of why the Executive Council should not get involved in clarification of such discrepancies, arguing that if the effort to secure action at the September EC had succeeded, it would have been embarrassing for all considered and harmed the credibility of the OPCW. The U.S. disagreed with Olbrich's assessment.

DOC/PSF SITE SELECTION - PRC VIEWS

18. (U) During the Conference, U.S. Del members had a lengthy discussion with two members of the Chinese delegation on the topic of site selection. The Chinese conceptual understanding of the U.S. approach was fairly weak, and Del members worked to explain it thoroughly. PRC concerns seemed to boil down to two issues: 1) the possibility of collusion and/or purely political targeting of inspections by other States Parties, and 2) (possibly an even bigger worry) holding down the number of inspections they have to host -- currently running about 10 per year. The U.S. noted the inherent limitations on collusion and the measures worked out with the Swiss to guard against it. However, it did not appear that Chinese fears were fully assuaged. The U.S. offered to try to arrange for a team to visit Beijing and brief the proposal, but the Chinese response was equivocal. (Note: The concern about the number of inspections China may face seems to have been stimulated or exacerbated by a TS presentation during the National Authorities weekend, which documented trends in global chemical industry over the last ten or twenty years, noting significant migration of activity from Europe to the Pacific Rim, projecting it forward for some period of time, and translating this into numbers of inspections. End Note.)

DOC/PSF SITE SELECTION - NEW ZEALAND VIEWS

19. (U) On the same topic, Simon Rae (New Zealand) noted that, given the numbers of DOC/PSF facilities in China and the U.S., it may not be possible to get a credible inspection intensity in either of those countries. As a result, suggested Rae, it might make more sense to pacify the Chinese by moving to a different exponent to "discount" numbers of inspectable facilities in the formula. Rae suggested using 0.6 vice the current 0.3. He noted that the countries of greatest interest tend to have about 20-40 DOC/PSF facilities, and that, while the change in exponent would substantially reduce impact on China, it would not have too much effect on these middle countries, and very little at all on the smallest.

FINNISH DESTRUCTION ASSISTANCE TO RUSSIA

10. (U) The Finnish Ambassador informed us during the Conference that the Finns have been in discussions with the Russians about providing assistance. They had grown concerned about the Russian Munitions Agency's ability to coordinate and handle assistance, and learned that the RMA is in fact an extremely small group of people, arguably overburdened. The Finns offered to provide support to help them with planning and coordination, but were turned down.

THE WORKING CAPITAL FUND

11. (U) During the budget discussions at CSP-8, the issue arose of once again seeking a provision allowing repayment of any borrowing from the Working Capital Fund be made at the end of the following year, rather than at the end of the year in which the borrowing occurred. Special Advisor for budget issues Ali Asghar announced that this 12-month extension had not helped the TS, that the WCF was still essentially useless, and that the TS needed at least 36 months to repay any borrowings to make the WCF a useful tool. Ashgar's

explanation behind the 36-month interval basically ties in with the historical payment pattern for Article IV/V income, in which very little comes in the year in which the activity takes place, the bulk of the money comes in the following year, and about a quarter comes in the year after that. Director of Administration Herb Schulz made a pitch for doubling the size of the WCF, and getting a 36-month repayment window. Even without the Program Stabilization Fund, Schulz thought that the funding problems for the OPCW then could be adequately addressed.

SWISS ON ELECTRONIC DECLARATIONS

112. (U) The Swiss Delegation informed the U.S. Del at CSP-8 that Switzerland had experimented with one of the beta versions of the U.S. CTFS Read-Write tool, and was disappointed. They noted that it may read and write CTFS, but they did not find it suitable for most of the things they wanted to do with their declarations. As a result, the Swiss have developed a Microsoft Access application for their own use that allows them to input declaration data (manually), print out forms, run queries, and export the data electronically, although it is not clear whether this includes at present the ability to spit out an ASCII-format, CTFS-compatible file.

113. (U) The Swiss are pleased with their product, and believe that it may be just the thing for many smaller countries that might find the U.S. CTFS tool daunting. They want to make it available to other states parties, though they are wary of crossing our bow, since they perceive CTFS to be an American pet project. They are inclined to perceive their database as complementary to CTFS, but are clearly a little apprehensive that the U.S. will see it as unwanted competition. They are also considering adding full CTFS read/write functionality. The problem, however, is that this would require a more serious programming effort, and periodic patches or updates as the file structure evolves. The Swiss do not have the in-house capacity for this, and might have difficulty financing it unless they charged a fee for copies of the program. The U.S. Del requested a copy of the program to share with colleagues in Washington for evaluation, and was told that the Swiss del would bring two copies on CD to the November industry consultations for our use.

114. (U) Javits sends.
SOBEL